

Financial Management Circular	#2006-2
Effective Date	June 15, 2006
General Subject	Administrative Rulemaking
Specific Subject	Required Cost-Benefit Analysis of Proposed Rules
Authority	IC 4-3-22-13 Executive Order 05-02
Application	This circular applies to all rules adopted by any state agency as defined in IC 4-22-2

WHEREAS, Executive Order 05-02, issued on January 10, 2005 and IC 4-3-22-13 (as adopted in HEA 1001-2005, Section 38), requires a cost-benefit analysis to be performed on the promulgation of new rules;

WHEREAS, Executive Order 05-02, issued on January 10, 2005, requires the Office of Management and Budget (OMB) to provide an assessment of the impact on Indiana businesses of new rules to the Governor;

WHEREAS, in the adoption of a rule or amendment, an agency shall determine the least intrusive and most efficient regulatory choice for the rule or amendment. A sound regulatory analysis is designed to inform the agency conducting the analysis and the public of the effects of regulatory actions.

This Financial Management Circular is intended to set forth the procedures for the implementation and reporting of a cost-benefit analysis for the promulgation of new rules and amendments to existing rules by state agencies to the OMB. The cost-benefit analysis will allow OMB to provide an assessment of the impact on Indiana businesses of new rules to the Governor and the Administrative Rules Oversight Committee as required by IC 4-3-22-13. This Circular applies to all rules and amendments adopted by any state agency under IC 4-22-2 et seq.

1. Prior to State Budget Agency approval of a rule under Executive Order 2-89, the agency proposing the adoption of a new rule or the adoption of an amendment to an existing rule, must complete and submit to the OMB, through the agency's State Budget Agency analyst, a cost-benefit analysis of the proposed rule or amendment.

2. At a minimum, the cost-benefit analysis should contain the following:

- a. Statement of need. The agency should explain whether the rule is intended to address a federal or state statutory requirement, significant market failure or to serve a public need such as improving government processes or promoting public safety or health. The statement of need should include an estimate of the number of individuals and businesses affected by the rule. The

policy rationale or goal behind the proposed rule or amendment should also be evaluated, including an analysis of the following:

- An identification of the conduct and its frequency of occurrence that the rule is designed to change
- The harm resulting from the conduct that the rule is designed to change and the likelihood the conduct will continue to occur absent a rule change
- Whether and how the agency has involved regulated entities in the development of the rule

b. Evaluation of benefits and costs. (It shall contain a comprehensive enumeration of the different types of benefits and costs, whether monetized or not, for the proposed rule or amendment.) Both tangible and intangible benefits and costs should be included. For example:

- An estimate of the primary and direct benefits of the rule, including, where applicable, the impact on consumer protection, worker safety, and business competitiveness
- An estimate of the secondary or indirect benefits of the rule
- An explanation of how the actions required by the rule are linked to the primary and secondary benefits
- An estimate of the compliance costs for individuals and businesses, including the costs of fees, new equipment or supplies, increased labor and training, education and supervisory costs
- An estimate of the administrative expenses, including any legal, consulting or accounting costs
- An estimate of any cost reductions to individuals and businesses as a result of the rule
- In certain situations, it is difficult to quantify specific monetary values—in these cases, a narrative describing non-quantifiable costs and benefits is sufficient and should be included
- To aid in identifying costs and benefits, OMB recommends consulting economic theory, previous academic or internal agency research, scenarios developed while defining the statement of need and policy rationale for the rule, collaborating with colleagues within and outside the agency and consultation with the public and regulated entities
- In addition, it may be helpful to establish a baseline for the cost-benefit analysis. How would the world look without the proposed rule? Issues to consider when forming a baseline include evolution of the market, changes in external factors affecting expected costs and benefits, existing rules by the agency and other government entities and the degree of compliance by regulated entities with other rules

This analysis should conclude with a determination of whether the direct and indirect benefits are likely to justify the costs.

- c. Examination of alternatives. An evaluation of alternatives to achieve the objectives of the proposed rule or amendment. Comparisons to a no-action baseline or next best alternative are especially useful. The following is a list of sources of alternatives to be considered:¹
- Alternatives defined by statute. Is the rule consistent with the specific statutory requirement and clearly within the agency's statutory discretion?
 - The feasibility of market oriented approaches rather than direct controls
 - Measures to improve the availability of information, rather than regulation
 - If applicable, various enforcement methods, such as inspections, periodic reporting and non-compliance penalties
 - Degrees of stringency
 - Performance standards rather than design standards. Performance standards express requirements in terms of desired outcomes. In contrast, design standards express requirements in terms of the specific means that must be satisfied without choice or discretion.
 - Different requirements for different sized firms. A variation of benefits and costs may exist depending on the mix of firms being regulated.
 - Different compliance dates
- d. When possible, independent verification or studies to support the policy rationale and types and quantification of the costs and benefits
- e. The sources relied upon in determining and calculating the costs and benefits

Following review and analysis of the agency's proposed cost-benefit analysis, the OMB may accept the analysis for purposes of EO 05-02 and IC 4-3-22-13, suggest revisions to the analysis or reject the analysis. This cost-benefit analysis shall also replace and be used for all purposes under IC 4-22-2 in lieu of the fiscal analysis previously performed by the Legislative Services Agency under IC 4-22-2 for rules involving a fiscal impact of greater than \$500,000.

This Circular is intended to enlighten the agency conducting the analysis and the public of the likely consequences of regulatory actions. In certain cases, this analysis will demonstrate that the proposed rule may not be necessary. In other situations, the analysis will validate that the rule is reasonable, necessary and warranted.

¹ Circular A-4, Office of Management Budget, Executive Office of President George W. Bush, September 17, 2003.

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